

REMARKS/ARGUMENTS

Claims 1-15 stand rejected and are pending in the present application. No new matter has been added.

FORMAL MATTERS

REJECTIONS UNDER 35 USC §112

Claims 2 and 3 have been rejected under 35 USC §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office states that all of the components listed in the claims are “optional”. Thus, the Office believes it is unclear what components are necessary for the claimed fragrance delivery system and asks for further clarification. Accordingly, Applicants have amended this claim to reflect appropriate claim language. Reconsideration and withdrawal of the rejection is, therefore, requested.

Claims 2 and 3 have also been rendered indefinite because the Office states that the terms “base, top, middle notes” are not defined by the claim and the specification does not provide a standard for ascertaining the requisite degree. The Office also adds that one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicants respectfully traverse this rejection.

The terms used by Applicants are terms that are commonly used in the art and understood by those who are skilled in perfume technology. Applicants provide Müller, Julia & Dr. Bräuer, Hans, The H&R Book of Perfume, Verlagsgesellschaft R. Glöss & Co., Hamburg, Germany, 1992, as a general reference for identifying such terminology. As provided therein, “base note” is commonly known as the third and last phase of a perfume’s life on the skin, or evaporation. “Top note” is commonly known as the first phase of a perfume’s evaporation “life”. It is a decisive part of the first impression, on opening the bottle and application of the perfume to the skin. The function of the top note is known to awaken interest for the perfume in general, and to provide impact. “Middle note” is commonly known as the second, middle phase of a perfume’s fragrance evaporation, occurring after the top note fades away. Applicants, therefore, submit that one of ordinary skill in the art reading the present invention would be reasonably apprised of the scope of the invention when reading such terms as “base, top, and middle notes” as used in claims 2 and 3. In light of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 USC §112, second paragraph.

DOUBLE PATENTING REJECTION

Claims 12 and 13 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting over Claims 8&9 of U.S. Patent No. 6,551,987 (hereinafter "987"). Claims 1-11, 14 and 15 have also been rejected under the judicially created doctrine of obviousness-type double patenting over Claims 1-11 of '987. Although Applicants believe their invention to be patentably distinct from the Claims of '987, Applicants wish to simplify the issues in the present application by concurrently submitting with this response the appropriate terminal disclaimer over the cited patent. In submitting this terminal disclaimer, Applicants state for the record that the terminal disclaimer is not an admission of obviousness. In fact, the Federal Circuit has held that:

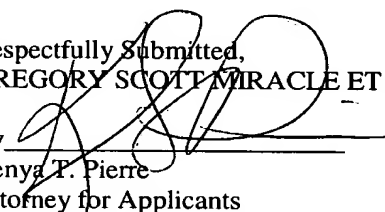
[T]he filing of a terminal disclaimer "simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection." *Quad Envtl. Techs. Corp. v. Union San. Dist.*, 20USPQ2d 1392 (Fed. Cir. 1991).

Applicants therefore submit that the obviousness-type double patenting rejection of Claims 12 and 13 has been overcome. Reconsideration and withdrawal of the double patenting rejection is respectfully requested.

CONCLUSION

In view of the above, Applicants respectfully submit that each of the issues raised by the Office has been addressed. Reconsideration and allowance of each of the pending claims is therefore respectfully requested.

Respectfully Submitted,
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